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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,441	01/23/2002	Vedvyas Shanbhogue	2207/13057	1964
25693	7590	11/01/2006	EXAMINER	
KENYON & KENYON LLP RIVERPARK TOWERS, SUITE 600 333 W. SAN CARLOS ST. SAN JOSE, CA 95110			FRANCIS, MARK P	
			ART UNIT	PAPER NUMBER
			2193	

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/052,441

Applicant(s)

SHANBHOGUE ET AL.

Examiner

Mark P. Francis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. This action is responsive to the amendment filed August 08, 2006.
2. Per applicants' request, claims 1-23 are pending.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3 & 5, 8-10 & 12, 15-20, 22 & 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiske (U.S. Pat 6,681,390) in view of Gard (U.S. Pat 6,438,748)

With respect to claims 1, 9, and 18, Fiske discloses a method of upgrading a computer system having a first software component and a second software component, said first and second software components operating at a current version (See Col. 1, lines 59-63) said method comprising:

upgrading the first software component to an upgraded version (See Col 1, lines 59-61 and Col. 2, lines 25-29); and

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validating the performance of the upgraded first software component, (See Col. 3, lines 54-62) but does not disclose comprising translating messages originating at the first software component from an upgraded version format to a current version format.

Gard discloses validating comprising translating messages originating at the first software component from an upgraded version format to a current version format (Col 8:37-67, "...to determine for each message whether a conversion from an old to a new format...a conversion task...from a not yet updated software unit...", Col 9:1-20) in an analogous system for the purpose of achieving a smooth upgrade of software in computer based systems. (Gard:Col 2:5-9)

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to validate the performance of the upgraded first software component by translating messages that originate at the first software component to Fiske's invention using the teachings of Gard.

The modification would have been obvious because one of ordinary skill in the art would have been motivated to achieve a smooth upgrade of software in computer based systems. (Gard:Col 2:5-9)

With respect to claims 2 and 19, Fiske discloses the methods of claims 1 and 18, wherein said computer system comprises a first processor (See Fig1, element labeled

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Processor 1) executing the first software component and a second processor (See Fig. 1, element labeled Processor 2) executing the second software component.

With respect to claims 3, 10, and 20, Fiske teaches the method of claim 1,9, and 18, wherein the first software component comprises at least one interface (Col 3, lines 50-53), and said upgrading comprises upgrading the interface.

With respect to claims 5 and 12, Fiske teaches the method of claims 4,11 wherein the compatible version is the current version. (See Col 5, lines 6-14)

With respect to claims 8 and 15, Fiske teaches the method of claims 1 and 9, further comprising upgrading the second software component to the upgraded version if the validating is acceptable. (See Col 2, lines 24-30).

With respect to claim 16, Fiske discloses the computer system of claim 9, wherein said first and second processors comprise a fault tolerant system. (See Col. 3, lines 11-22).

With respect to claim 17, Fiske discloses the computer system of claim 9, wherein said first and second processors comprise a multi-processor system. (See Col 3., lines 8&9)(See Fig 1, Processor1 and Processor2).

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With respect to claim 22, Fiske discloses A fault tolerant computer system comprising a software component adapted to be used in said fault tolerant computer system, said software component further comprising:

An interface;(See Col 3, lines 50-52) and

A translation function;(See Col 3, line 55)

Wherein said translation function translates messages from said interface to a version common to all other software components of the computer system. (See Col. 3, lines 54-62).

With respect to claim 23, Fiske teaches fault tolerant computer system of claim 22, wherein said interface is upgraded.(Col 3:54-62, "...a graphical user interface (GUI)...transmitting the upgraded software...")

5. Claims 4, 11, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiske in view of Gard(U.S. Pat 6,438,748) and further in view of Apfel (5,974,454).

the rejection of claims 1,9, and 18 are incorporated respectively and further,

Neither Fiske nor Gard show querying any version of the first software component and the second software component; and determining a compatible version for the computer system.

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Apfel teaches a method of querying any version of the first software component and the second software component; (See Col 2. lines 30-35 & Col 8, lines 54-66)

And determining a compatible version for the computer system. (See Col 9, lines 32-38). Furthermore, Apfel method's allows the system to upgrade or install features that haven't been completely developed due to time constraints caused by schedule release dates. The software manufacture may know of a future date when the features will be completely developed thus creating a need for a system that can automatically check for an upgraded module feature on a predetermined basis.

Apfel shows a method of querying any version of the first software component and the second software component and determining a compatible version for the computer system in an analogous art for the purpose of automatically updating a software program module stored on a computer.

Therefore it would have been obvious to a person of ordinary skill in the art at the time of the invention to add a software component version-querying feature and a process for determining a compatible version to Fiske's invention to reduce consumer's manufacturing and shipping costs of materials due to the software manufacturer's changing or "slippage" of the upgraded features' release date(s).

The modification would have been obvious because one of ordinary skill in the art would have been motivated to automatically upgrade software program modules while

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reducing manufacturing and shipping costs of diskettes, CD-ROMS, or other data storage media of upgraded software materials.

6. Claims 6,7,13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiske in view Gard and further in view of Kraml. (6,493,594)

Neither Fiske nor Gard disclose wherein said upgrading comprises adding new features and said validating comprises disabling the new features.

Kraml teaches wherein said upgrading comprises adding new features (See Col 5, lines 8 – 14, "As by adding a new target") and said validating comprises disabling the new features.(See Col 5, lines 41-43, "If the security record is not correct, then the system controller does not invoke the software definition file"). Kraml's method prevents an inappropriate or unauthorized system definition file from being invoked by the system controller.(See Col 2, lines 65-67)

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to disable new software upgraded features that have not been validated.

The modification would have been obvious because one of ordinary skill in the art would have been motivated to provide a system and method for automatically providing appropriate configuration and control information to a multi-module hardware system when the hardware system is updated. (See Col 1, lines 50-54)

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With respect to claims 7 and 14, Fiske discloses an upgrading method in accordance with claims 6 and 13 but does not disclose further comprising activating the new features if the validating is acceptable.

Kraml discloses further comprising activating the new features if the validating is acceptable. (See Col 5, lines 40-41, "before the software definition file is invoked. If the security record is correct, then the system controller invokes the software definition file.)

Kraml's method teaches that the addition of new validated features will give an appropriate or authorized system definition file to be invoked by the system.

Kraml shows wherein said upgrading comprises adding new features if the validating is acceptable in an analogous art for the purpose of invoking an appropriate system definition file. (See Col 2, lines 65-67)

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to activate new upgraded features that have been validated

The motivation for doing so would have been to provide a system and method for automatically providing appropriate configuration and control information to a multi-module hardware system when the hardware system is updated. (See Col 1, lines 50-56)

***Response to Arguments***

7. Applicant's arguments filed on August 08, 2006 have been fully considered but they are not persuasive. Following is the Examiner's response to Applicants' arguments.

With respect to claims 1 Applicant essentially argues that Gard et al. does not anticipate the features of this claim because Gard et al. does not teach or suggest using the conversion for the purpose of validating the performance of the upgrade.

In response, the Examiner disagrees, Note Col 6:10-50, it is here that Gard teaches that an important aspect of his invention is to provide an efficient approach for the upgrade of these messages in addition to the upgrade of the software and related internal data. As a result, this allows for a reduced overall system downtime during the upgrade process and for further increased system availability and security. The Examiner also Note Col 7:22-45, it is here that Gard also teaches a message conversion that describes at least one message conversion necessary due to an upgrade of the software processing system. He also states that an upgrade may also lead to the insertion of new messages in addition to the newly initialized messages. Thus Gard does teach using the conversion for the purpose of validating the performance of the upgrade.

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Also, regarding claim 1, Applicant essentially argues that Gard does not teach that a smooth upgrade is achieved through any sort of validation technique and thus there is not proper motivation to combine these references.

In reply, The Examiner differs, Note Col 2:5-30, it is here that Gard teaches that a main object of his invention is to achieve a smooth upgrade of software in computer based systems and this is achieved by providing an interface for message conversion information that describes at least one message being converted into a new representation for the updated software processing system in compliance with specifications in the given message conversion. Therefore, Gard does teach that a smooth upgrade is achieved through any sort of validation technique and there is proper motivation to combine these references.

### ***Conclusion***

**8. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark P. Francis whose telephone number is (571)272-7956. The examiner can normally be reached on Mon-Fri 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571)272-3719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
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